IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 18902 of 1999

Between:

Dr.P.Sham Rao S/o. Y.Pochaiah (Late)
(Dravya Guna) Dr.B.R.K.R. Govt Ayurvedic College
Hyderabad.

..... PETITIONER

AND

1 The State of A.P. Rep by its Secretary to the Govt
Health & Mediacl & Family Welfare(1.2) Dept Secretariat , Saifabad, Hyderabad.
2 The Director , Regional Dy.Director
Indian Medicine & Homeopathy Dept Zone-VI, and VII, 5th floor , Gagan Vihar Buildings ,M.J.Road, Nampally , Hyderabad.
3 Dr.M.Radha Krishna Sharma Superintendent Govt Hospital Warangal.
4 Dr.B.Ramulu , Regional Dy.Director Indian Medicine & Homeopathy Dept Zone-VI, and VII, 5th floor , Gagan Vihar Buildings ,M.J.Road, Nampally , Hyderabad.
5 Dr.Saarojini Patil Professor (Prasuti Stree and Balaroga"), Dr.BRKR Govt , Ayurvedic College Erragadda, Hyderabad.
6 Dr.G.Subramanya Sastry Regional Dy.Director Zone IV, Kadappa (under suspension), H.No.6-107-A Ravindranagar , Kadapa.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue a writ , order or direction , more particularly one in the nature of writ of certiorari calling for the records relating to and connected with the judgment rendered on 16-8-99 in O.A.3057/99 on the file of the A.P. Administrative Tribunal and quash or set a

side the same and further quash and set aside the orders of the State Govt in G.O.Ms.No.54(Health Medicine and Family Welfare) Dt: 10-2-99 and also the orders of the Govt issued in G.O.Ms.No.322 (Health , Medicine and Family Welfare) dt: 15-6-99 and the Consequential Proceedings issued by the Director of Indian Medicine in his Proceedings Dt: 15-6-99 wherein the 3rd respondents were given postings orders as Additional director , Indian Medicine /Homeopathy (Ayurveda) and as Principal Ayurveda College , Warangal and quash and set aside the same holding them as illegal, unjust and arbitrary and also violative of guaranteed to the petitioner under Articles 14 and 16 of the Constitution.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent Nos. 1 and 2.: GP FOR SERVICES II

Counsel for respondents 3 to 6: Mr. Y. VenkataSastry (not present)

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE P.S.NARAYANA

W.P. No. 18902 of 1999

JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

The petitioner has challenged the order of the Andhra Pradesh Administrative Tribunal rendered in OA No. 3057 of 1999. He has also challenged the GO.Ms.No. 54, Health, Medicine and Family Welfare, dated 10.2.1999.

The petitioner submits that he was initially recruited as a Junior Medical Officer on 2.9.1974 in the Indian Medicine and Homeopathy Department and he was subsequently promoted as a Senior Medical Officer/Assistant Professor on 3.12.1979. Thereafter he was deputed by the State Government to pursue the post graduate course of M.D. from the Benaras University, Varanasi. He successfully completed the post graduation in Shalya Shalakya discipline. After acquiring the

post graduate qualification in 1983, he was posted as Gazetted Lecturer/Asst. professor on 7.1.1984 and worked in that capacity till 22.12.1997. Thereafter he was promoted as a Reader, Post Graduate (Professor undergraduate) courses of Ayurveda. Presently he was holding the post of Reader P.G. unit (Dravya Guna), Dr. D.R.K.R. Government Aayurvedic College, Hyderabad. He was fully qualified and eligible to be promoted as a Reader PG/Professor U.G. in 1987 itself. He submits that he should have been promoted as a Reader (P.G.) when a vacancy arose due to retirement of Dr. V.S. Patil, Shalya discipline. However, the State Government did not consider his case for promotion and he filed OA Nos. 2907 of 1994 and 6170 of 1994 which were still pending before the Tribunal. However, the State Government considered the cases of unofficial respondents for promotion to the post included in category-I, Group-B of the Indian Medicine and Homeopathy special rules. Aggrieved by the action of the State Government in empanelling them through G.O.Ms.No. 54, sdt. 10.2.1999 and their subsequent promotion through G.O.Ms.No. 322, M & H, dt. 15.6.1999, the petitioner filed O.A.No. 3057 of 1999 before the Tribunal which was dismissed by an order dt. 16.8.1999. Therefore the writ petition has been filed. The petitioner contended that the Government of Andhra Pradesh framed special rules through G.O.Ms.No. 265, Health, Medical and Family Welfare (I.2 Dept), dt. 26.5.1994 governing the recruitment to various posts including in the Indian Medicine and Homeopathy Services. In terms of these rules the petitioner was qualified and eligible to be promoted.

Counter-affidavit has been filed by the Deputy Director (Admn.), Indian Medicines and Homeopathy Department in which it is stated that though the petitioner possessed the requisite qualifications for promotion to the post of Reader, he could not be promoted during the year 1987 because persons who were qualified and who were seniors to him were available and they got the promotion. The petitioner filed O.A.No. 2907 of 1994 requesting the Tribunal to direct the respondents to place his claim before the Review Departmental

Promotion Committee for promotion to the post of Reader. He also filed OA No. 6170 of 1999 praying to set aside the G.O.Ms.No. 265, HM & FW, dt. 26.5.1994 which was pending before the Tribunal. In the meantime the petitioner got promotion as a Reader on his turn and was working as such with effect from 23.12.1997. The petitioner was presently working as Reader, P.G. Unit (Shalya, Salakya) with effect from 15.7.1999. It is also submitted that in supersession of the earlier rules, the Government has framed new rules by G.O.Ms.No. 265, HM & FW, dt. 26.5.1994. According to these rules, the post of Addl. Director/Principal/P.G. Professor constitutes category-I of Class-B (Ayur) and it can be filled up by promotion from Chief Medical Officer/Professors and other categories including category-2 of Class-B of the said rules. No P.G. qualification has been prescribed for promotion to the post in question. However, according to note 3 of the said rules, the teaching posts shall be filled as far as possible by posting of those who possess a P.G. degree in the system. It is contended that unofficial respondents did not possess P.G. qualification, but were fully qualified for promotion to the post of Principal/P.G. Professor/Addl. Director and they were also seniors to the petitioner. Accordingly the Government issued G.O.Ms.No. 54, HM & FW (I2) Dept., dt. 15.6.1999 empanelling the names of these persons for promotion to the post of Principal/P.G. Professor, Government and by G.O.Ms.No. 322, HM & FW (I2) Department, dt. 15.6.1999 certain officers were promoted as Addl. Director/principal/professor. The petitioner filed O.A.No. 3057 of 1999 challenging those orders.

The Tribunal found, on analysis of the rules, that there was no bar for promoting the persons who were not post graduates and we have not been shown any rule by which the unofficial respondents were not qualified. The petitioner relies on Notes 3 and 5 under Rule 3 of the Special Rules. Note 3 states that the teaching posts in the Ayurveda or Unani Colleges shall be filled as far as possible by the posting of those who possess a P.G. degree in the respective systems of Indian Medicine and Note 5 states that for the posts of

Additional Directors (Ayurveda/Unani/Homeopathy) Senior most and suitable officers of Ayurveda, Unani and Homeopathy on an equitable basis may be posted. This rule nowhere disqualifies the persons who have not the post graduate qualification from being promoted. The petitioner in the seniority list figured at Sl.No. 24 and a few persons who were at Sl.Nos. 3 to 6 and 8 and 9 were empanelled and promotions were given to persons who were at Sl.Nos. 3 to 5. There were still 14 persons in the seniority list who were senior to the petitioner whose cases have to be considered for promotion. The Tribunal was right in holding that even if the contention of the petitioner was accepted that the qualification of post graduation was required for promotion, there were many seniors to him who possess those qualifications. Even in the writ petition the petitioner himself in para-9 has stated that even though his name was at Sl.No. 24 in the seniority list, but there were only three persons senior to him who possess post graduate qualifications, teaching experience and Accounts Test as against the availability of four vacancies. It is not the question whether the petitioner has to be promoted or not, but the question is whether the unofficial respondents were promoted legally or illegally. We do not find any illegality in the order passed by the Tribunal who found the unofficial respondents to be qualified and eligible to be promoted as the promotion had to be made on the basis of seniority. The Tribunal also took note of the fact that in terms of the Rule 7 of the A.P. Indian Medicine and Homeopathy Service Rules the petitioner had not completed three years of service as Reader when he filed the O.A., as such he was not entitled to and eligible for promotion.

For these reasons, we do not find any merit in the writ petition which is accordingly dismissed. No costs.

BNJ.

Dt. 29.10.2004

KR

_____ PSNJ.

Sd/-

ASST. REGISTRAR

To

1 The State of A.P. Rep by its Secretary to the Govt
Health & Mediacl & Family Welfare(1.2) Dept Secretariat , Saifabad, Hyderabad.
2 The Director , Regional Dy.Director
Indian Medicine & Homeopathy Dept Zone-VI, and VII, 5th floor , Gagan Vihar Buildings ,M.J.Road, Nampally , Hyderabad.

3. 2 CCs to G.P. for Services-II, High Court Buildings, Hyd (out)

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